Supreme Court, U.S.
FILED
AUG 25 2000
CLERK

(b)

No. 99-1792

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2000

DIRECTOR OF REVENUE OF MISSOURI, *Petitioner*,

v.

COBANK, ACB, *Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

JOINT APPENDIX

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Petition for Certiorari filed: April 24, 2000
Certiorari Granted: June 26, 2000

60pp

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SUPREME COURT OF MISSOURI

SC81727

COBANK, ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES,
APPELLANT
vs.
DIRECTOR OF REVENUE, STATE OF MISSOURI,
RESPONDENT

06-25-99	Petition for Review filed.
07-07-99	Certification of the Record of Proceedings Before the Administrative Hearing Commission (four volumes of legal file).
08-16-99	Appellant's Brief filed.
09-13-99	Respondent's Brief filed.
09-28-99	Appellant's Reply Brief filed.
10-28-99	Case argued and submitted.
11-17-99	Letter from Counsel for Appellant dated November 12, 1999 (with attachments) received.
01-25-00	Opinion: Reversed and Remanded - All Concur.

STATE OF MISSOURI
ADMINISTRATIVE HEARING COMMISSION

98-0718RI CoBank, ACB v. Director of Revenue
98-0716RI

03-13-98 Complaint filed.

04-08-98 Answer filed.

11-19-98 Petitioner's Motion for Summary Determination, Proposed Findings of Fact, Proposed Conclusion of Law and Brief filed.

12-11-98 Copy of Order of First Division of the Chancery Court of Pulaski County, Arkansas filed by Petitioner.

01-19-99 Respondent's Proposed Findings of Fact, Proposed Conclusions of Law and Suggestions in Opposition to Petitioner's Motion for Summary Determination filed.

02-11-99 Petitioner's Motion for Entry of Decision and Order filed.

02-25-99 Respondent's Response to Petitioner's Motion for Entry of Decision and Order filed.

03-03-99 Respondent Secretary of State's Response to Petitioner's Motion for Entry of Decision and Order.

03-11-99 Reply Brief filed by Petitioner.

03-16-99 Respondent's Suggestions in Rebuttal to Petitioner's Reply Brief filed.

04-02-99 Amended Reply Brief filed by Petitioner.

05-05-99 Stipulation of Facts filed by Petitioner.

05-28-99 Order Issued for Parties to Show Cause by 6-4-99 not to Rule on Petitioner's Motion for Summary Determination.

06-28-99 Appealed to Missouri Supreme Court.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

CoBank, ACB, as Successor to the National Bank for Cooperatives	)	
Petitioner,	)	
v.	)	Case No. 98-000716RI
Acting Director of the Missouri Department of Revenue,	)	
Respondent.	)	

COMPLAINT

Comes now Petitioner, CoBank, ACB ("CoBank") as successor to the National Bank for Cooperatives ("National") and for its complaint, appealing the final determination of the Respondent upholding the Missouri Department of Revenue's Notice of Adjustment authorizing only a partial refund of Missouri Corporate Income Tax, states as follows:

1. CoBank is an Agricultural Credit Bank organized under the laws of the United States, and a member

institution of the Farm Credit System. CoBank was formed by the consolidation, effective January 1, 1995, of National, the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives. CoBank is the successor to all rights and obligations of National. CoBank's address is 5500 S. Quebec Street, Greenwood Village, Colorado 80111.

2. Respondent is the Acting Director of the Missouri Department of Revenue ("Department"), and is sued in his official capacity and not individually.

3. The Commission has jurisdiction over this matter pursuant to § 143.651, RSMo. 1994.[1]

4. During the 1994 (the "Audit Period"), National was a member institution of the Farm Credit System, organized under the Act of Congress known as the Farm Credit Act of 1933 (now superseded by the Farm Credit Act of 1987 (12 U.S.C. § 2000 *et seq.*)). Pursuant to 12

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[1]All statutory references are to the Revised Statutes of Missouri (1994) unless otherwise noted.

U.S.C. § 2141 and National's charter issued by the Credit Administration, National was "a federally chartered instrumentality of the United States." A copy of the charter is attached hereto as Exhibit A.

5. On September 12, 1995, CoBank timely filed a corporate Income Tax Return requesting a refund in the amount of $179,533.00 for tax year 1994.

6. On October 4, 1995, the Department issued a Notice of Adjustment authorizing a partial Corporate Income Tax Refund. A copy of the Notice of Adjustment is attached as Exhibit B.

7. CoBank timely protested the Notice of Adjustment by letter dated October 31, 1995.

8. On February 20, 1998, Respondent issued a final determination denying CoBank's protest of the Department's Notice of Adjustment. A copy of the Respondent's Determination is attached as Exhibit C.

9. Respondent's denial of CoBank's protest is erroneous in that as instrumentalities of the United States, CoBank and National are immune from state taxation, including the Missouri Corporate Income Tax pursuant to the Supremacy Clause of the United States Constitution.

WHEREFORE, based on the foregoing, CoBank respectfully requests the Administrative Hearing Commission to enter an Order finding: (1) that Respondent's denial of Petitioner's protest is erroneous, and (2) that CoBank is entitled to a refund of Corporate Income taxes paid in 1994. Petitioner further prays for such other relief as may be proper including relief under §§ 136.315 and 536.087.

Respectfully submitted,

BRYAN CAVE LLP

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John P. Barrie, #28291
Carole Lewis Iles, #33821
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
Counsel for Petitioner

Of Counsel:

Richard A. Hanson, Esq.
McDermott, Will & Emery
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(312) 984-7799

EXHIBIT A

FCA
Farm Credit Administration

Charter

NATIONAL BANK FOR COOPERATIVES

The Farm Credit Administration, in accordance with section 3.20 of the Farm Credit Act of 1971, as amended (the Act), hereby charters a bank established pursuant to the merger of the Baltimore Bank for Cooperatives, Columbia Bank for Cooperatives, Louisville Bank for Cooperatives, Jackson Bank for Cooperatives, St. Louis Bank for Cooperatives, Omaha Bank for Cooperatives, Wichita Bank for Cooperatives, Texas Bank for Cooperatives, Sacramento Bank for Cooperatives, Spokane Bank for Cooperatives, and Central Bank for Cooperatives to be known as the National Bank for Cooperatives (the Bank). The principal office location of the Bank shall be in the City of Englewood, County of Arapahoe, State of Colorado. The Bank is an institution of the Farm Credit System and a federally chartered instrumentality. The Bank may offer credit and related services to eligible borrowers located within any territory that may be served by Farm Credit System institutions under the Act and as it may hereafter be amended.

By this Federal charter, the Farm Credit Administration hereby authorized the Bank to exercise all powers conferred on the Bank under the Act and the regulations of the Farm Credit Administration, as they may hereafter be amended.

IN WITNESS WHEREOF, the Acting Chairman of the Farm Credit Administration Board has executed this charter and caused the seal of the Farm Credit Administration to be Affixed hereto this 29th day of December, 1988. This charter shall be effective January 1, 1989.

CHARTER NO. 14

Farm Credit Administration
McLean, Virginia

_____

Marvin R. Duncan
Acting Chairman of the Board

Attest

_____

David A. Hill
Secretary to the Board

EXHIBIT B

MISSOURI DEPARTMENT OF REVENUE
TAX ADMINISTRATION BUREAU
P.O. BOX 700 (314) 751-4541
JEFFERSON CITY, MO 65105-0700

DATE: OCTOBER 04, 1995

NATIONAL BANK FOR COOPERATIVES
MISSOURI TAX I.D.: 13495186
NATIONAL BANK FOR COOPERATIVES
NOTICE NO: 95258210370
PO BOX 5110
BEG TAX YEAR: 01/94
DENVER, CO 80217
REFUND DUE: $32,703.00

MISSOURI CORPORATION INCOME TAX
NOTICE OF ADJUSTMENT

THIS MISSOURI CORPORATION INCOME TAX NOTICE OF ADJUSTMENT FOR THE ABOVE TAXABLE YEAR IS ISSUED FOR THE FOLLOWING REASON(S):

AN ADJUSTMENT WAS MADE TO THE MISSOURI RETURN.

FEDERAL TAXABLE INCOME REPORTED AS $60,469,216.00 WAS ADJUSTED TO $62,176,591.00.

FEDERAL NET OPERATING LOSS CARRY FORWARD REPORTED AS $1,707,375.00 WAS APPROVED AS $.00.

"OVERPAYMENT" REPORTED AS $179,533.00 WAS COMPUTED AS $32,703.00.

MISSOURI TAXABLE INCOME COMPUTED AS $2,349,277.00.

(***SEE PAGE 2 FOR ADDITIONAL ADJUSTMENTS.)

PLEASE COMPARE THE ABOVE FIGURE(S) WITH YOUR RETURN TO SEE WHERE YOUR RETURN WAS ADJUSTED. A REFUND WILL BE ISSUED IN THE AMOUNT OF $32,703.00 WITHOUT ANY FURTHER ACTION ON YOUR PART.
IF YOU DISAGREE WITH THIS NOTICE OF ADJUSTMENT YOU HAVE SIXTY (60) DAYS FROM THE DATE OF THIS NOTICE TO FILE A WRITTEN PROTEST.

PLEASE DIRECT ANY QUESTIONS TO THE TAX ADMINISTRATION BUREAU AT THE ABOVE ADDRESS.

MISSOURI DEPARTMENT OF REVENUE
TAX ADMINISTRATION BUREAU
P.O. BOX 700 (314) 751-4541
JEFFERSON CITY, MO 65105-0700

DATE: OCTOBER 04, 1995

NATIONAL BANK FOR COOPERATIVES
MISSOURI TAX I.D.: 13495186
NATIONAL BANK FOR COOPERATIVES
NOTICE NO: 95258210370

PO BOX 5110
BEG TAX YEAR: 01/94
DENVER, CO 80217
REFUND DUE: $32,703.00

MISSOURI CORPORATION INCOME TAX

PAGE 2 NOTICE OF ADJUSTMENT

(*** ADDITIONAL ADJUSTMENTS ***)

MISSOURI INCOME TAX COMPUTED AS $146,030.00.

REFUND (BEFORE APPLICABLE INTEREST:
REQUESTED FOR $179,533.00 - APPROVED FOR
$32,703.00

EXHIBIT C

MISSOURI DEPARTMENT OF REVENUE

NATIONAL BANK FOR COOPERATIVES)
)
PROTEST OF DENIAL OF CLAIMS FOR REFUND)
CORPORATE INCOME TAX)
)
Final Decision)
)
YEAR: 1994)

FINDINGS OF FACT

National Bank for Cooperatives (hereinafter referred to as "Taxpayer") filed 1994 Missouri Corporate Income tax returns. Taxpayer is a corporation that was formed by the consolidation of the National Bank for Cooperatives, the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives. Taxpayer filed an application for tax refund/credit requesting a refund of $179,533. The Missouri Department of Revenue (hereinafter referred to as "Department") computed the income tax as $146,830 and

approved a refund for $32,703. Department records indicate that the corporation closed as of December 31, 1994.

Taxpayer filed a timely protest. Taxpayer claimed that under the Supremacy Clause of the United States Constitution, no state may impose tax on a federal instrumentality unless Congress expressly consents to the tax. Taxpayer claims that The National Bank for Cooperatives is a federal instrumentality, and Congress has not consented to the imposition of state tax on these entities. Therefore, the National Bank for Cooperatives is exempt from state taxation, including the income tax of Missouri.

BASIS OF DECISION

Title 12, of the United States Code, regulates banks and banking. Chapter 7 therein governs The Farm Credit Act, which established the Farm Credit Administration in 1933. It has since been repealed and in its place in Chapter 23, the Farm Credit System was established in 1971; to provide equitable and competitive interest rates to eligible

agricultural borrowers. Congress recognized the need for agricultural credit in rural areas, and established the farmer-owned cooperative Farm Credit System.[1] Taxpayer was chartered under 12 U.S.C. § 2141 which states

> (a) Charter--The National Bank for Cooperatives . . . shall be a federally chartered instrumentality of the United States and an institution of the Farm Credit System. (b) Powers -- The consolidated bank and the board of directors of such bank shall have all of the powers, rights, responsibilities, and obligations of the district banks for cooperatives and the Central Bank for Cooperatives and the boards of directors of such banks except as otherwise provided for in this chapter.

Title 12 U.S.C. § 2002 established Farm Credit Banks which are privately owned. 12 U.S.C. § 2142, provides for the board of directors of the bank, citing that the nomination and election of the members of the board of directors of the consolidated bank under this subsection shall be carried out in accordance with regulations issued by the Farm Credit

---

[1]12 U.S.C. § 2001 (1986).

Administration; and 12 U.S.C. § 2013 grants the general corporate powers of the privately-owned farm credit banks.

Taxpayer is a privately chartered and owned Agricultural Credit Bank. The Taxpayer's Charter cites that "The Bank [Taxpayer] is an institution of the Farm Credit System." Further, the Charter cites "the Bank may offer credit and related services to eligible borrowers located within any territory that may be served by Farm Credit System institutions under the Act." The privately chartered and owned Agricultural Credit Bank is not an instrumentality of the United States that has any kind of tax exemption under 12 U.S.C. § 2077. Furthermore, no production credit associations have been owned by the federal government since 1968 that are tax-exempt under 12 U.S.C. § 2077. There is absolutely no authority for the Taxpayer to be exempt from Missouri income tax.

The Charter does cite "The Bank is an institution of the Farm Credit system and a federally chartered

instrumentality." However, the Taxpayer has no governmental regulatory authority and is a private entity. 12 U.S.C. § 2155 sets out the liability of the banks:

United States not liable.

> (1) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same subchapter of this chapter.
>
> . . .
>
> (c) The United States shall not be liable or assume any liability directly or indirectly thereon.

A careful review of Chapter 23 of Title 12 of the Federal Code which regulates banks and banking confirms that the Taxpayer is not exempt from Missouri income tax. In the protest the Taxpayer relied on ***Farm Credit Services of Central Arkansas, PCA, et al. v. State of Arkansas***, 117 S.Ct. 1776 (1997), rev'g 76 F.3d 961 (CA-8, 1996). The Department finds it inapplicable.

Taxpayer has the burden of proof before the Director of Revenue on appeal. Section 143.661, RSMo. Burden of proof on taxpayer, . . .

> In any proceeding before the director of revenue or on appeal under sections 143.011 to 143.996 the burden of proof shall be on the taxpayer . . .

The Taxpayer has not provided any documentation to support the assertions in the protest letter dated October 31, 1995. Taxpayer has not sustained its burden to prove that the Taxpayer is immune from Missouri state income tax.

DECISION

It is the Final Decision of the Director of Revenue upon reconsideration that the denial of refund claim issued to Taxpayer is correct.

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative

Hearing Commission within thirty days after the date this decision was mailed or the date it was delivered. whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

Joyce Hainen Crandon
Legal Counsel

Dated: February 20, 1998

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

CoBank, ACB, as Successor to the National Bank for Cooperatives	)	
Petitioner,	)	
v.	)	Case No. 98-000718 RI
Acting Director of the Missouri Department of Revenue,	)	
Respondent.	)	

COMPLAINT

Comes now Petitioner, CoBank, ACB ("CoBank") as successor to the National Bank for Cooperatives ("National") and for its complaint, appealing the final determination of the Respondent upholding the Department of Revenue's denial of CoBank's claim for refund of Corporate Income Tax, states as follows:

1. CoBank is an Agricultural Credit Bank organized under the laws of the United States, and a member institute of the Farm Credit System. CoBank was formed by

the consolidation, effective January 1, 1995, of National, the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives. CoBank is the successor to all rights and obligations of National. CoBank's address is 5500 S. Quebec Street, Greenwood Village, Colorado 80111.

2. Respondent is the Acting Director of the Missouri Department of Revenue ("Department"), and is sued in his official capacity and not individually.

3. The Commission has jurisdiction over this matter pursuant to § 143.651, RSMo. 1994.[1]

4. During the years 1992, 1992 and 1993 (the "Audit Period"), National was a member institution of the Farm Credit System, organized under the Act of Congress known as the Farm Credit Act of 1933 (now superseded by the Farm Credit Act of 1987 (12 U.S.C. § 2000 *et seq.*)). Pursuant to 12 U.S.C. § 2141 and National's charter issued

[1]All statutory references are to the Revised Statutes of Missouri (1994) unless otherwise noted.

by the Credit Administration, National was "a federally chartered instrumentality of the United States." A copy of the charter is attached hereto as Exhibit A.

5. On April 19, 1995, CoBank timely filed an application for Tax Refund/Credit (Form 472A) and Amended corporation Income Tax Returns requesting refunds, totaling $489,938, for tax years 1991 to 1993.

6. On September 28, 1995, the Department of Revenue denied CoBank's refund claims on the grounds that Farm Credit Services of Central Arkansas, PCA v. State of Arkansas, was appealed and had not yet been finalized. A copy of the Department's denial is attached as Exhibit B.

7. CoBank timely protested the Department's refund claim denial by letter dated November 2, 1995.

8. On February 20, 1998, Respondent issued a final determination denying CoBank's protest of the Department's refund claim denial. A copy of the Respondent's Determination is attached as Exhibit C.

9. Respondent's denial of CoBank's refund claim is erroneous in that as instrumentalities of the United States, CoBank and National are immune from state taxation, including the Missouri Corporate Income Tax pursuant to the Supremacy Clause of the United States Constitution.

WHEREFORE, based on the foregoing, CoBank respectfully requests the Administrative Hearing Commission to enter an Order finding: (1) that Respondent's denial of Petitioner's refund claim is void and erroneous, and (2) that CoBank is entitled to a refund of Corporate Income Taxes paid in 1991, 1992 and 1993. Petitioner further prays for such other relief as may be proper including relief under §§ 136.315 and 536.087.

Respectfully submitted,

BRYAN CAVE LLP

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John P. Barrie, #28291

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Suite 3600
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(314) 259-2000

Counsel for Petitioner

Of Counsel:

Richard A. Hanson, Esq.
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096
(312) 984-7799

EXHIBIT A

[Same as Exhibit A to Complaint #98-000716RI. App. A-11]

EXHIBIT B

TAX ADMINISTRATION BUREAU-
STATE OF MISSOURI
P.O. BOX 700
DEPARTMENT OF REVENUE
JEFFERSON CITY, MO 65105-0700
(314) 751-2836

NATIONAL BANK FOR COOPERATIVES
5500 SOUTH QUEBEC STREET
GREENWOOD VILLAGE CO 80111

September 28, 1995

RE: MISSOURI CORPORATION INCOME TAX
YEAR BEGINNING: JANUARY 1, 1991,
JANUARY 1, 1992 AND JANUARY 1, 1993
FEDERAL ID NUMBER: 841102254
MITS NUMBER: 13495186

Dear Sir or Madam:

We have received your amended Missouri Corporation Income Tax Return for the tax year(s) beginning January 1, 1991, January 1, 1992 and January 1, 1993.

Your refund claim(s) are being denied for the following reasons:

One of the basis of your refund claims, Farm Credit Services of Central Arkansas, PCA, et al. v. State of Arkansas has been appealed and has not been finalized.

This denial of refund claim can be protested per Section 143.841, RSMo 1994. You must file a written protest setting forth the grounds on which the protest is based. If the written protest is not received within 60 days of the date of this letter, your amended return(s) will be retained for informational purposes only.

If you have any questions, please contact Gloria Howard, Tax Administration Bureau, P.O. Box 700, Jefferson City, Missouri 65105-0700.

Sincerely,

Diane S. Luebbering
Manager
Tax Administration Bureau

[Internal routing information omitted.]

EXHIBIT C

MISSOURI DEPARTMENT OF REVENUE

NATIONAL BANK FOR COOPERATIVES)
)
PROTEST OF DENIAL OF CLAIMS FOR REFUND)
CORPORATE INCOME TAX)
)
Final Decision)
YEAR: 1991, 1992, AND 1993)

FINDINGS OF FACT

National Bank for Cooperatives (hereinafter referred to as "Taxpayer") filed 1991, 1992 and 1993 Missouri Corporate Income tax returns. Taxpayer is a corporation that was formed by the consolidation of the National Bank for Cooperatives, the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives. On April 19, 1995, Taxpayer filed an application for tax refund/credit and amended corporation income tax returns requesting refunds of all taxes paid for the years 1991, 1992 and 1993 on the basis that Taxpayer was a Federal instrumentality and immune from income tax imposed by the State of Missouri.

Department records indicate that the corporation closed as of December 31, 1994. The Department of Revenue (hereinafter referred to as the "Department") issued a letter dated September 28, 1995 denying the income tax refund.

Taxpayer filed a timely protest. Taxpayer claimed that under the Supremacy Clause of the United States Constitution, no state may impose tax on a federal instrumentality unless Congress expressly consents to the tax. Taxpayer claims that The National Bank for Cooperatives is a federal instrumentality, and Congress has not consented to the imposition of state tax on these entities. Therefore, the National Bank for Cooperatives is exempt from state taxation, including the income tax of Missouri. On that basis, Taxpayer filed the claim for refund requesting a refund of all income tax paid with respect to tax years 1991, 1992 and 1993 and interest as provided by law.

BASIS OF DECISION

Title 12, of the United States Code, regulates banks and banking. Chapter 7 therein governs The Farm Credit Act, which established the Farm Credit Administration in 1933. It has since been repealed and in its place in Chapter 23, the Farm Credit System was established in 1971; to provide equitable and competitive interest rates to eligible agricultural borrowers. Congress recognized the need for agricultural credit in rural areas, and established the farmer-owned cooperative Farm Credit System.[1] Title 12 U.S.C. § 2002 established Farm Credit Banks which are privately owned. 12 U.S.C. § 2012 enables the Farm Credit Banks to establish a board of Directors; and 12 U.S.C. § 2013 grants the general corporate powers of the privately-owned farm credit banks.

Taxpayer is a privately chartered and owned Agricultural Credit Bank. The Taxpayer's Charter cites that "The Bank [Taxpayer] is an institution of the Farm Credit

---

[1]12 U.S.C. § 2001 (1986).

System." Further. the Charter cites "the Bank may offer credit and related services to eligible borrowers located within any territory that may be served by Farm Credit System institutions under the Act." The privately chartered and owned Agricultural Credit Bank is not an instrumentality of the United States that has any kind of tax exemption under 12 U.S.C. § 2077. Furthermore, no production credit associations have been owned by the federal government since 1968 that are tax-exempt from Missouri income tax.

The Charter does cite "The Bank is an institution of the Farm Credit System and a federally chartered instrumentality." However, the Taxpayer has no governmental regulatory authority and is a private entity. 12 U.S.C. § 2155 sets out the liability of the banks;

United States not liable.

> (1) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually and shall be liable for the interest payments on long-term notes, bonds, debentures, or other

> obligations issued by other banks operating under the same subchapter of this chapter . . .
>
> (c) The United States shall not be liable or assume any liability directly or indirectly thereon.

A careful review of Chapter 23 of Title 12 of the Federal Code which regulates banks and banking confirms that the Taxpaver is not exempt from Missouri income tax. In the protest the Taxpayer relied on ***Farm Credit Services of Central Arkansas, PCA, et al. v. State of Arkansas***, 117 S.Ct. 1776 (1997), rev'g 76 F.3d 961 (CA-8, 1996). The Department finds it inapplicable.

Taxpayer has the burden of proof before the Director of Revenue on appeal. The Missouri statute that rules is as follows: Section 143.661, RSMo. Burden of proof on taxpayer, . . .

> In any proceeding before the director of revenue or on appeal under sections 143.011 to 143.996 the burden of proof shall be on the taxpayer . . .

The Taxpayer has not provided any documentation to support the assertions in the protest letter dated November 2. 1995, nor has Taxpayer responded to inquiries from the Department. Taxpayer has not sustained its burden to prove that the Taxpayer is immune from Missouri state income tax.

DECISION

It is the Final Decision of the Director of Revenue upon reconsideration that the denial of refund claim issued to Taxpayer is correct.

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail

or certified mail, it will be deemed filed on the date it is received by the Commission.

Joyce Hainen Crandon
Legal Counsel

Dated: February 20, 1998

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

COBANK, ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES,	)	
Petitioner,	)	
v.	)	Case No. 98-000716RI
DIRECTOR OF REVENUE, STATE OF MISSOURI,	)	
Respondent.	)	

ANSWER

COMES NOW Respondent, Director of Revenue, by and through counsel, and in answer to Petitioner's Complaint, the Respondent admits, denies and alleges as follows:

1. Respondent is without sufficient knowledge or information to form a belief as to the truth to admit or deny all of the allegations in all of the four (4) sentences of paragraph one (1) of Petitioner's petition.

2. Respondent admits the allegations of paragraph two (2).

3. Respondent admits the allegations of paragraph three (3).

4. Respondent is without knowledge or information to form a belief as to the truth to admit or deny allegations in sentence one (1) of paragraph four (4): Respondent denies allegations in sentence two (2) paragraph, four (4): Respondent denies allegations in sentence three (3), paragraph four (4).

5. Respondent admits the allegations in paragraph five (5).

6. Respondent admits to the allegations in paragraph six (6).

7. Respondent denies the allegation that CoBank timely protested Notice of Adjustment.

8. Respondent denies the allegation of denying CoBank's protest. Respondent admits that Exhibit C is a Final Decision issued to National Bank for Cooperatives.

9. Respondent denies all the allegations in all sentences of paragraph nine (9).

10. All allegations of the Petition not expressly admitted are denied.

WHEREFORE, having answered Petitioner's Complaint, Respondent prays that the Final Decision herein be sustained and for such further Orders as are just and proper.

Respectfully submitted,

Department of Revenue

Joyce Hainen Crandon
Legal Counsel
Missouri Department of
Revenue
Truman State Office Building
301 West High, Room 670

P.O. Box 475
Jefferson City, MO 65105-0475
Phone (573) 751-0961
Fax (573) 751-7151

Attorneys for Respondent

[Certificate of service omitted.]

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

COBANK, ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES,	)	
Petitioner,	)	
v.	)	Case No. 98-000718RI
DIRECTOR OF REVENUE, STATE OF MISSOURI,	)	
Respondent.	)	

ANSWER

COMES NOW Respondent, Director of Revenue, by and through counsel, and in answer to Petitioner's Complaint, the Respondent admits, denies and alleges as follows:

1. Respondent is without sufficient knowledge or information to form a belief to admit or deny all of the allegations in all of the four (4) sentences of paragraph one (1) of Petitioner's petition.

2. Respondent admits the allegations of paragraph two (2).

3. Respondent admits the allegations of paragraph three (3).

4. Respondent is without knowledge or information to form a belief to admit or deny allegations in sentence one (1) of paragraph four (4): Respondent denies allegations in sentence two (2) paragraph, four (4): Respondent denies allegations in sentence three (3), paragraph four (4).

5. Respondent denies that CoBank filed an application and Amended income tax returns as alleged in paragraph five (5).

6. Respondent denies that it denied CoBank's refund claims for refund (sentence one (1)). Respondent admits that Exhibit B is the Department's notice issued to National Bank for Cooperatives.

7. Respondent denies the allegation that CoBank timely protested Notice of Adjustment.

8. Respondent denies the allegation of denying CoBank's protest. Respondent admits that Exhibit C is a Final Decision issued to National Bank for Cooperatives.

9. Respondent denies all the allegations in all sentences of paragraph nine (9).

10. All allegations of the Petition not expressly admitted are denied.

WHEREFORE, having answered Petitioner's Complaint, Respondent prays that the Final Decision herein be sustained and for such further Orders as are just and proper.

Respectfully submitted,

Joyce Hainen Crandon
Legal Counsel
Missouri Department of Revenue
Truman State Office Building
301 West High, Room 670

P.O. Box 475
Jefferson City, MO 65105-0475
Phone (573) 751-0961
Fax (573) 751-7151

Attorney for Respondent.

[Certificate of Service omitted.]

EXHIBIT 2 TO RESPONDENT SECRETARY OF STATE'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY DETERMINATION, PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSION OF LAW AND BRIEF

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

COBANK, ACB, AS SUCCESSOR	)	
TO THE NATIONAL BANK FOR	)	
COOPERATIVES,	)	
Petitioner,	)	Case No.
v.	)	95-002048SS
SECRETARY OF STATE OFFICE	)	
STATE OF MISSOURI,	)	
Respondent.	)	

PETITIONER'S ANSWERS TO
SECRETARY'S FIRST INTERROGATORIES
TO COBANK

Comes Now Petitioner, and provides the following answers and objections to Respondent's first interrogatories:

INTERROGATORY 7:

Has National or Cobank ever paid franchise taxes, other excise taxes or privilege taxes based on income to states other than Missouri?

YES _X_. NO ___. If your answer is "yes,"

a) Identify each and every state to which such taxes were paid, the type of tax paid, and the year or years the same were paid between 1991 and the present:

ANSWER:

See attached Exhibit 1.

Exhibit 1

CoBank, ACB, As Successor to
National Bank for Cooperatives, Petitioner
v. Case No. 95-002048SS
Secretary of State Office
State of Missouri, Respondent

State:	Type:
Alabama	Bank Excise
Arizona	Corporate Franchise
Arkansas	Corporate Income/ Corporate Franchise
California	Corporate Income
Colorado	Corporate Income
Delaware	Corporate Income
Florida	Corporate Income
Georgia	Corporate Income
Idaho	Corporate Income
Illinois	Corporate Income
Indiana	Bank Franchise
Iowa	Bank Franchise

Taxes Paid

1991	1992	1993	1994	1995	1996
No	No	No	Yes	No	No
No	No	No	Yes	Yes	No
No	No	Yes	Yes	No	No
Yes	Yes	Yes	Yes	Yes	No
Yes	Yes	Yes	Yes	Yes	No
No	No	No	Yes	Yes	No
No	No	No	Yes	Yes	No
Yes	Yes	Yes	Yes	Yes	No
No	No	Yes	Yes	Yes	No
Yes	Yes	Yes	Yes	Yes	No
Yes	Yes	Yes	Yes	Yes	No

Kansas	Corporate Income	Yes	Yes	Yes	Yes	Yes	No
Kentucky	Intangible	Yes	Yes	Yes	Yes	Yes	No
Maine	Corporate Income	No	No	No	Yes	Yes	No
Maryland	Bank Franchise	Yes	Yes	Yes	Yes	Yes	No
Massachusetts	Bank Franchise	Yes	Yes	Yes	Yes	Yes	No
Minnesota	Corporate Income	Yes	Yes	Yes	Yes	Yes	No
Montana	Corporate Income	No	No	No	Yes	Yes	No
Nebraska	Corporate Income	Yes	Yes	Yes	Yes	Yes	No
New York	Bank Franchise	No	No	Yes	Yes	Yes	No
North Carolina	Corporate Income/Franchise	No	No	Yes	Yes	Yes	No
North Dakota	Corporate Income	No	No	Yes	Yes	Yes	No
Ohio	Corporate Franchise	No	No	No	Yes	Yes	No
Oklahoma	Corporate Income	Yes	Yes	Yes	Yes	Yes	No
Oregon	Corporate Franchise	Yes	Yes	Yes	Yes	Yes	No
South Carolina	Corporate Income	Yes	Yes	Yes	Yes	Yes	No
South Dakota	Bank Franchise	No	No	Yes	Yes	Yes	No
Tennessee	Bank Franchise	Yes	Yes	Yes	Yes	Yes	No
Vermont	Corporate Franchise	No	No	No	Yes	Yes	No

Virginia	Corporate Income
Wisconsin	Corporate Income

Refunds have been requested for all taxes paid for years for which the Statute of Limitations is still open. Refunds have been received from a number of states.

Yes	Yes	Yes	Yes	Yes	No
Yes	Yes	Yes	Yes	Yes	No

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

COBANK, ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES,	)	
Petitioner,	)	Case No. 98-000716 RI
v.	)	Case No. 98-000718 RI
DIRECTOR OF REVENUE,	)	
Respondent.	)	
COBANK, ACB, AS SUCCESSOR TO THE NATIONAL BANK FOR COOPERATIVES,	)	
Petitioner,	)	Case No. 95-002048 SS
v.	)	
SECRETARY OF STATE OF THE STATE OF MISSOURI,	)	
Respondent.	)	

STIPULATION OF FACTS

It is hereby stipulated that, for purposes of this case, the following statements may be accepted as undisputed facts.

1. CoBank, ACB came into existence, and thus became the successor to The National Bank for Cooperatives, on January 1, 1995. A true and correct copy of CoBank, ACB's charter issued by the Farm Credit Administration is attached hereto.

DATED: 5-5-99 MISSOURI SECRETARY OF STATE

Respectfully submitted,

_____

Jill Jackson, Esq.
General Counsel's Office
Missouri Secretary of State
600 West Main Street
P.O. Box 778
Jefferson City, MO 65102

Attorney for the Missouri Secretary of State

DATED: 5-5-99 COBANK, ACB

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Attorney for Petitioner

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Attachment

FCA

Farm Credit Administration

CHARTER

CoBank, ACB
Arapahoe County, Colorado

The Farm Credit Administration, in accordance with sections 5.17(a) and 7.0 of the Farm Credit Act of 1971, as amended (the Act), hereby charters an Agricultural Credit Bank to be known as CoBank, ACB (the Bank), established pursuant to the consolidation of the National Bank for Cooperatives, the Springfield Bank for Cooperatives, and the Farm Credit Bank of Springfield. The principal office location of the Bank shall be in the City of Greenwood Village, County of Arapahoe, State of Colorado. The Bank is an institution of the Farm Credit System and a federally chartered instrumentality.

By this Federal charter, the Farm Credit Administration hereby authorizes the Bank to exercise all powers conferred on the Bank under the Act and the regulations of the Farm Credit Administration provided, however, that the territory served by the Bank pursuant to Title I of the Act shall be the States of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

IN WITNESS WHEREOF, the Chairman of the Farm Credit Administration Board has executed this 13th day of December 1994. This charter shall be effective January 1, 1995.

CHARTER NO. 19 Farm Credit Administration
McLean, Virginia

_____
Marsha Martin
Chairman

Attest

_____
Floyd Fithion
Acting Secretary to the Board

SUPREME COURT OF THE UNITED STATES

Monday, June 26, 2000

Certiorari Granted
99-1792 Director of Revenue of Missouri v. Cobank ACB

The petition for a writ of certiorari is granted limited to the following question: "Does 12 U.S.C. Section 2134 authorize states to tax the income of the National Bank for Cooperatives, a federally chartered instrumentality of the United States?"